IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4058 OF 2005

Babita Bishaga @ Sunita
Ganesh Mallik ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.A.M.Saraogi for the Applicant
Ms S.D.Shinde,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JULY 13,2005.

P.C.:

1. This is an application for bail by the Applicant who is a woman. The offence alleged against the Applicant is punishable under Section 14 of the Foreigners Act, 1946. The case of the Applicant is that in September 2001, she married to a person who is admittedly an Indian citizen. The memorandum of marriage which is alleged to have taken place according to the Hindu Vedic rites is placed on record. Xerox copy of ration card and identity card issued to the holders of a hut is also placed on record.

2. Admittedly the investigation is completed and the charge sheet has been filed. The learned A.P.P. pointed out that the Applicant could not produce any evidence to show that she is born in India and the documents which she has purported to produce are found to be fabricated. The learned A.P.P. submitted that considering the nature of the offence, the Applicant should not be enlarged on bail. She also pointed out that the Applicant keeps on changing her address and

therefore if she is enlarged on bail, she will easily abscond.

3. The maximum punishment under Section 14 of the Foreigners Act, 1946 is five years. The offence is triable by the court of a Magistrate. Looking to the large pendency of cases in the Courts of Magistrates In Mumbai , it will not be possible for the learned Magistrate to decide the case in near future. This is not a case where the allegation of the prosecution is that there are criminal antecedents of the Applicant and that there is apprehension that the Applicant likely to indulge in any criminal activities. The case of the Applicant is that she is married to an Indian citizen. In so far as a woman is concerned, even the provisions of Section 437 of the Code of Criminal Procedure, 1973 adopt a liberal approach. As the Applicant is in custody from 13th April 2005, a case is made out for enlarging the Applicant on bail especially when there is no apprehension expressed about the activities of the Applicant after she is enlarged on bail. Stringent conditions can be imposed on the Applicant to ensure that she will not abscond.

4. Hence, I pass following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No. 45 of 2005 registered with SB1-GB CB CID, Mumbai, subject to furnishing a personal bond of Rs.15,000/- (Rupees fifteen thousand) with two local sureties.

ii) The bail is granted subject to condition that till the disposal of the trial, the Applicant will report to SB1-GBCBCID, Crawford Market, Mumbai-400001 on every day at 5.00 p.m.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The learned Magistrate is expected to dispose of the case as expeditiously as possible by treating it as 'High Court Expedited Trial.'

viii) The parties to act upon an authenticated copy of this order.

JUDGE